THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 17326 of 2005

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DATED: 05.08.2005

Between:

Kamal Prasad S/o. C. Tulja Prasad
R/o. 3-6-108/2/A, Himayathnagar, Hyderabad,

..... PETITIONER

AND

The Additional Municipal Commissioner, M.C.H. East Zone,

M.C.H. Tank Bund, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

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WRIT PETITION NO. 17326 of 2005

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ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in issuing notices dated 22.07.2005 and 26.07.2005 directing the petitioner to vacate and remove the structure as illegal and arbitrary.

When the matter listed today under the caption 'for admission' both the counsel conceded at the bar that the facts in this writ petition are similar and identical to the facts in WP.No.26400 of 1997, which was disposed of by a Division Bench of this

court on 16-2-1998 and requested to dispose of this writ petition also in terms of the said judgment.

Considering the facts and circumstances of this case and on perusal of the judgment of the Division Bench of this court in Pilli Lakshmana Rao & Ors. V/s. Executive Officer, Gram Panchayat, Challapalle & Ors, reported in 2000 (5) ALT-246 (DB) wherein it was observed as follows:

> *"Though this writ petition and many other writ petitions are premature, as they have been filed in the absence of any specific orders of eviction or dispossession or demolition, in order to see that the interest of both the parties is safe guarded, we do not like to dismiss the writ petition and we dispose of the writ petition directing the authorities to take appropriate action complying with the observations to be made by us in this regard.*
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> *When a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands, jump into the premises, and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities shall pass orders to determine the damages. It is very clear that barring a few cases, in most of the cases, which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition, as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupants though looks misconceived, but after hearing the arguments, we found that there was an attempt by the Government either to widen the roads or clear the encroachments. But, in our view, before doing that, the authorities have to follow certain principles of natural justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements.*
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> *If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupants calling upon them to*

show cause as too why the proposed action shall not be taken. On receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self-government authority or to the occupants. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupants are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this order calling upon the occupants to show cause as to why the action proposed shall not be taken by giving 60 days to file the objections, if any. The person interested viz., the occupants shall submit their objections or explanation within the time stipulated together with any other documents they would like to rely upon in support of their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupants shall produce all the evidence, which they want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupants. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the officer concerned and the occupants or the persons interest on the date notified by the concerned officer. The occupants shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, statusquo obtaining as on today shall continue"

The respondents are directed to follow due process of law before taking any steps to demolish the house of the petitioner bearing H.No.3-6-108/2/A situated at

Himayath Nagar, Hyderabad.

Accordingly, the writ petition is disposed of at the admission stage in terms of the judgment of the Division Bench of this Court referred supra. The respondents are directed to follow due process law in compliance with the guidelines issued in the said judgment. However, there shall be no order as to costs.

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05.08.2005

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